



Billing Code 3720-58

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Naval Base Ventura County, San Nicolas Island, California; Restricted Area

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps of Engineers (Corps) is amending its regulations to modify an existing permanent restricted area in the waters of the Pacific Ocean surrounding San Nicolas Island, California. The modifications realign subsections (designated Alpha, Bravo and Charlie) within the restricted area to better match the U.S. Navy's current operational requirements. In addition, the rule corrects a mapping error in the original rule. The perimeter and overall size of the existing restricted area remains unchanged. San Nicolas Island is wholly owned by the United States and operated by the U.S. Navy as part of Naval Base Ventura County.

DATES: Effective date: [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, D.C. at 202-761-4922, or Mr. Antal Szijj, Corps of Engineers, Los Angeles District, Regulatory Division, at 805-585-2147 or by email at antal.j.szijj@usace.army.mil.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3), the Corps of Engineers is amending the regulations at 33 CFR 334.980 to realign subsections within the existing restricted area in the waters surrounding San Nicolas Island, Ventura County, California, in a manner that better matches the U.S. Navy's current operational needs. Vessels would only be prohibited from entering the restricted area during closure periods. The amendment would also update various titles and contact references to current command structure and names, and correct a mapping error in the original rule.

The proposed rule was published in the November 22, 2013 issue of the Federal Register (78 FR 70005; docket number COE-2013-0014). Comments were received from four commenters in response to the Federal Register notice and the Corps of Engineers Los Angeles District's local public notice. Three commenters objected to the enforcement of the 300-yard stand-off surrounding the shoreline of the island that was a provision of the original rule and was not proposed to be changed. The commenters stated that they had previously been allowed to trap lobster within this 300-yard stand-off with the agreement of the Navy and that the Navy's recent enforcement of this provision of the restricted area has substantially reduced their lobster catch resulting in economic harm.

The 300-yard stand-off has been a provision of the restricted area since it was established in 1965. The amendment does not modify or eliminate this provision. The Navy has stated that any previous informal agreements between fishermen and Navy personnel to allow fishing did not follow protocol and are not valid. The Navy has

determined through experience that a 300-yard stand-off from the shoreline is necessary to maintain the security of its facilities at San Nicolas Island. The changes to the restricted area that do affect commercial fishing include clarification that the entire restricted area excluding the 300-yard stand-off remains open to fishing unless one or more sections are specifically closed for naval operations.

One commenter also stated that the waters surrounding San Nicolas Island are subject to rough seas that may develop quickly and unexpectedly, therefore having the ability find safe anchorage close to the island is important.

The rule change does not affect the provision that allows encroachment into the 300-yard stand-off or landing in emergency situations.

Procedural Requirements

a. Review under Executive Order 12866.

This final rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review under the Regulatory Flexibility Act.

This final rule has been reviewed under the Regulatory Flexibility Act (Public Law 96-354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The Corps determined that the amendment of this restricted area has practically no economic impact on the public, no anticipated navigational hazard, or interference with existing waterway traffic. This final rule will have no significant economic impact on small entities.

c. Review under the National Environmental Policy Act.

Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps determined that this amendment to the regulation will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. An environmental assessment was prepared after the public notice period closed and all comments received from the public were considered. The environmental assessment may be viewed at the District office listed at the end of the FOR FURTHER INFORMATION CONTACT section, above.

d. Unfunded Mandates Act.

This rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps amends 33 CFR Part 334 as follows:

PART 334 -- DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR Part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Revise § 334.980 to read as follows:

§ 334.980 Pacific Ocean, around San Nicholas Island, Calif., naval restricted area.

(a) The area. (1) Perimeter (restricted). The waters of the Pacific Ocean around San Nicholas Island, Calif., extending about 3 miles seaward from the shoreline, described as follows:

	Latitude	Longitude
Point A	33°10'10"	119°24'20"
Point C	33°10'10"	119°31'10"
Point D	33°12'00"	119°35'30"
Point E	33°14'20"	119°37'40"
Point F	33°16'40"	119°38'10"
Point G	33°19'10"	119°37'10"
Point I	33°20'10"	119°31'10"
Point K	33°17'40"	119°24'50"
Point L	33°13'50"	119°21'50"

(2) Sections of area.

(i) ALPHA section is the northerly section of the area, and is described as follows:

	Latitude	Longitude
Point H	33°20'01"	119°32'02"
Point I	33°20'10"	119°31'10"
Point K	33°17'40"	119°24'50"
Point L	33°13'50"	119°21'50"
Point O	33°13'50"	119°26'02"
Thence northwesterly along shoreline to Point N		
Point N	33°17'04"	119°32'02"
Point H	33°20'01"	119°32'02"

(ii) BRAVO section is the westerly section of the area, and is described as follows:

	Latitude	Longitude
Point N	33°17'04"	119°32'02"
Thence westerly, southerly and easterly along the shoreline to Point M		
Point M	33°13'10"	119°29'40"
Point B	33°10'10"	119°29'40"
Point C	33°10'10"	119°31'10"
Point D	33°12'00"	119°35'30"
Point E	33°14'20"	119°37'40"

Point F	33°16'40"	119°38'10"
Point G	33°19'10"	119°37'10"
Point H	33°20'01"	119°32'02"
Point N	33°17'04"	119°32'02"

(iii) CHARLIE section is the southerly section of the area, and is described as follows:

	Latitude	Longitude
Point L	33°13'50"	119°21'50"
Point O	33°13'50"	119°26'02"
Thence southerly and westerly along the shoreline to Point M		
Point M	33°13'10"	119°29'40"
Point B	33°10'10"	119°29'40"
Point A	33°10'10"	119°24'20"
Point L	33°13'50"	119°21'50"

(b) The regulations. (1) Except during closure periods or as otherwise provided in this section, the restricted area will be open to all vessels.

(2) Boats must remain at least 300 yards from the shoreline of San Nicolas Island at all times. Nothing in this provision shall be construed as authorization to anchor within 300 yards or to land on San Nicolas Island, except in an emergency.

(3) No person, vessel or other craft shall enter the restricted area or designated section(s) during closure periods unless authorized to do so by the Commanding Officer, Naval Base Ventura County or the Officer in Charge, San Nicolas Island.

(4) Submarine cables within the restricted area post a risk to the equipment of vessels engaged in dredging, dragging, seining, anchoring and other bottom contact operations. Appropriate care must be taken to avoid damage.

(5) Closure Periods. Notice that the restricted area or section(s) ALPHA, BRAVO, or CHARLIE are closed to entry shall be given by radio broadcast Monday

through Friday at 0900 and 1200 on 2638 kHz and 2738 kHz or by contacting “PLEAD CONTROL” on VHF-FM radio channel 11 or 16. Closure information may also be requested by telephone between 0600 and 1800 Monday through Friday at (805) 989-8841 or via recorded message at (805) 989-1470.

(6) The regulations in this section shall be enforced by personnel attached to Naval Base Ventura County, Point Mugu, Calif., and by such agencies as may be designated by the Commandant, 11th Naval District, San Diego, Calif.

Dated: __March 27, 2014__

Approved: _____

James R. Hannon

Chief, Operations and Regulatory

Directorate of Civil Works

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